

ESTTA Tracking number: **ESTTA113800**

Filing date: **12/08/2006**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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|------------------------|---|
| Proceeding | 91167963 |
| Party | Defendant A Donkey And Goat, LLC A Donkey And Goat, LLC #102 1890 Bryant Street San Francisco, CA 94110 |
| Correspondence Address | J. Scott Gerien Dickenson, Peatman & Fogarty 809 Coombs Street Napa, CA 94559 UNITED STATES tmdept@dpfnapa.com |
| Submission | Motion for Sanctions |
| Filer's Name | Jaymie Kilgore |
| Filer's e-mail | tmdept@dpfnapa.com |
| Signature | /Jaymie Kilgore/ |
| Date | 12/08/2006 |
| Attachments | motion-sanctions.pdf (5 pages)(132905 bytes) |

Certificate of Electronic Filing

I hereby certify that this correspondence is being electronically filed with the Trademark Trial and Appeal Board through the ESTTA system located at <<http://estta.uspto.gov>>.

Dated: 12/8/06

By Jaymie Kilgore
Jaymie Kilgore

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

Bully Hill Vineyards, Inc.

Opposer,

vs.

A Donkey and Goat, LLC,

Applicant.

Opposition No. 91167963

MOTION FOR DISCOVERY SANCTIONS

TO THE COMMISSIONER OF TRADEMARKS:

On August 29, 2006, Applicant moved to compel discovery of documents from Applicant.

On October 18, 2006, the Board issued an Order requiring Opposer to respond in full to Applicant's document requests at issue in the Motion to Compel within 30 days of the mailing date of the Order, i.e., by Friday, November 17, 2006. The Order also indicated that if the Opposer failed to comply with the order, the Board would entertain a formal motion for sanctions, including judgment.

Applicant has not received any discovery response or documents from Opposer following the Order of the Board. On November 28, 2006, counsel for Applicant emailed counsel for Opposer to inquire as to whether the documents would be forthcoming and advised opposing counsel that a motion for sanctions would be filed if no response was received. A copy of this email is attached hereto as Exhibit 1. Applicant has not received any response from Opposer.

Accordingly, pursuant to 37 CFR §2.120(g), Applicant hereby moves the Board to issue

1 an order of judgment in Applicant's favor as sanction for Opposer's failure to comply with the
2 Order compelling Opposer's response to Applicant's discovery. Opposer initiated this action
3 against Applicant, yet Opposer has failed to cooperate during the discovery process. During
4 discovery Opposer raised confidentiality objections, but failed to enter into the Board's form
5 stipulated protective order as signed and provided to Opposer by Applicant (*see* Motion to
6 Compel). Opposer failed to file any papers in response to Applicant's Motion to Compel,
7 Opposer has failed to produce the documents ordered to be produced by the Board and Opposer
8 has failed to respond to Applicant's inquiry concerning the production of documents. These
9 actions clearly indicate that Opposer is not reasonably cooperating in discovery in this matter and
10 judgment should therefore be entered in favor of Applicant. Therefore, Applicant respectfully
11 requests that judgment be entered in its favor.
12

13
14 Dated: 12/8/06

DICKENSON, PEATMAN & FOGARTY

15
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17 By 

J. Scott Gerien
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23 Attorneys for Applicant,
A DONKEY AND GOAT, LLC
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EXHIBIT 1

Scott Gerien

From: Scott Gerien
Sent: Tuesday, November 28, 2006 2:07 PM
To: 'b.gaynor@br-tmlaw.com'
Subject: Opposition No. 91167963

Dear Mr. Gaynor:

Pursuant to the Board's October 18, 2006 Order, your client was required to provide us with the documents subject to our requests for production by Friday, November 17, 2006. We have not received the documents. Please let us know if the documents have been sent. Consider this our attempt to meet and confer. Unless we hear from you or receive the documents by Friday, December 1, 2006, we will proceed to file a motion for sanctions.

Sincerely,
Scott Gerien

12/8/2006

PROOF OF SERVICE

I declare that I am over the age of 18 years, employed in the County of Napa, and not a party to the within action; my business address is 809 Coombs Street, Napa, California 94559. On December 8, 2006, I served the attached **MOTION FOR DISCOVERY SANCTIONS**

on the person(s) listed below:

Brian M. Gaynor, Esq.
Baker & Rannells
626 North Thompson Street
Raritan, NJ 08869

by enclosing a true copy in a sealed envelope addressed as shown below and placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid. The persons served are as follows:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed December 8, 2006, at Napa, California.


JAYMIE KILGORE